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United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DARRELL MCDONALD, et al.,
Plaintiffs,
v.
INDYMAC MORTGAGE SERVICES, et al.,
Defendants.

No. C 12-4610 MMC

**ORDER AFFORDING PARTIES
OPPORTUNITY TO FILE
SUPPLEMENTAL BRIEFING RE:
STANDING; DEFERRING RULING
PENDING SUBMISSION OF
SUPPLEMENTAL BRIEFS**

Before the Court are three motions to dismiss plaintiffs' First Amended Complaint, filed, respectively, by (1) defendant Wells Fargo Bank, N.A. on November 28, 2013; (2) NDeX West, LLC on November 29, 2012; and (3) OneWest Bank F.S.B. and Deutsche Bank National Trust Company on November 29, 2012. Plaintiffs have filed opposition, to which defendants have replied.

In reviewing the applicable law, it has come to the Court's attention that a number of plaintiffs' claims may be subject to dismissal for lack of standing. See B.C. v. Plumas Unified Sch. Dist., 192 F.3d 1260, 1264 (9th Cir. 1999) (noting "federal courts are required sua sponte to examine jurisdictional issues such as standing"). In particular, for parties who have filed for bankruptcy, the Bankruptcy Code provides that (1) the bankruptcy "estate is comprised of . . . all legal or equitable interests of the debtor in property as of the commencement of the [bankruptcy] case," see 11 U.S.C. § 541(a)(1), and (2) "property of the estate that is not abandoned . . . and that is not administered in the case remains

1 property of the estate,” see 11 U.S.C. § 554(d); see also Sierra Switchboard Co. v.
2 Westinghouse Elec. Corp., 789 F.2d 705, 706, 710 (9th Cir. 1986) (affirming dismissal of
3 emotional distress claim; holding plaintiff “lacked capacity to sue” because plaintiff’s “claim
4 . . . remained property of the bankruptcy estate” under § 541(a)(1)); 11 U.S.C. § 108(a)
5 (providing for time period within which “trustee may commence . . . action”). The Court
6 finds it appropriate to afford the parties an opportunity to file supplemental briefing on the
7 subject.¹

8 Accordingly, the parties are hereby DIRECTED to file, no later than March 1, 2013,
9 their supplemental briefs on the question of standing, said briefs not to exceed ten pages in
10 length. Any reply thereto shall be filed no later than March 15, 2013, and shall not exceed
11 seven pages in length. In the interim, the Court will defer ruling on the pending motions to
12 dismiss.

13 **IT IS SO ORDERED.**

14 Dated: February 15, 2013

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16 MAXINE M. CHESNEY
17 United States District Judge

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23 ¹ The claims the Court has identified as potentially covered by §§ 541(a)(1) and
24 554(d) are as follows: plaintiff’s First through Eleventh Causes of Action (“Fraud”);
25 Thirteenth Cause of Action (“Violation of 15 U.S.C. § 1692 et seq the Fair Debt Collection
26 Practices Act (FDCPA)”); Fourteenth Cause of Action (“Violation of RESPA 12 C.F.R. § 226
27 et seq. and 12 C.F.R. § 2605”); Sixteenth Cause of Action (“False Advertising, California
28 Bus. and Prof. § 17500”); Seventeenth Cause of Action (“Wrongful Foreclosure”);
Twentieth Cause of Action (“Negligent Infliction of Emotional Distress”); Twenty-Second
Cause of Action (“Violation of California Civil Code § 2943(b)(1)”; and Twenty-Third Cause
of Action (“Slander of Title”). If any defendant is of the view that any other cause(s) of
action are covered by the Bankruptcy Code, it should discuss such additional cause(s) of
action as well.